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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
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12 TEDDY LEROY WILSON, Jr., CDCR) Case No. 06cv2420-WQH (BLM)
13 #78443,)
14 Plaintiff,) **REPORT AND RECOMMENDATION FOR**
15 v.) **ORDER GRANTING IN PART AND**
16 ISMAEL BRIZYELA, et al.,) **DENYING IN PART DEFENDANTS'**
17 Defendants.) **MOTION TO DISMISS**
) **[Doc. No. 25]**
)
)
)

18 This Report and Recommendation is submitted to United States
19 District Judge William Q. Hayes pursuant to 28 U.S.C. § 636(b) and Civil
20 Local Rules 72.1(c) and 72.3(f) of the United States District Court for
21 the Southern District of California.

22 On November 1, 2006, Plaintiff Teddy Leroy Wilson, Jr., who is
23 proceeding *pro se* and *in forma pauperis*, filed this civil rights suit
24 against several defendants under 42 U.S.C. § 1983. Doc. No. 1. The
25 district judge *sua sponte* screened and dismissed his Complaint and
26 subsequent First Amended Complaint and Plaintiff ultimately filed a
27 Second Amended Complaint [Doc. No. 13]. The district judge *sua sponte*
28 screened the Second Amended Complaint and dismissed without leave to

1 amend all but Plaintiff's excessive force claims asserted in Count 2 of
2 his Second Amended Complaint. Doc. No. 14.

3 On July 18, 2007, Defendants Hector Rubio and Ismael Brizuela, the
4 only defendants remaining in the case, filed a motion to dismiss the
5 Second Amended Complaint on Eleventh Amendment immunity grounds. Doc.
6 No. 25. After requesting and receiving several extensions of time to
7 respond, Plaintiff filed a timely opposition. Doc. No. 44. Defendants
8 filed a reply on January 29, 2008. Doc. No 45.

9 This Court finds the issue appropriate for decision on the papers
10 pursuant to Civil Local Rule 7.1.(d)(1). See Doc. No. 42. The Court
11 has considered the Second Amended Complaint ("SAC"), Defendants' Motion
12 to Dismiss, Plaintiff's Opposition, Defendants' Reply and all supporting
13 documents submitted by the parties. For the reasons set forth below,
14 this Court **RECOMMENDS** that Defendants' Motion to Dismiss [Doc. No. 25]
15 be **GRANTED IN PART AND DENIED IN PART**.

16 **BACKGROUND**¹

17 Plaintiff claims Defendants Ismael Brizuela and Hector Rubio, both
18 parole officers in the El Cajon parole office, used excessive force
19 against him in violation of the Constitution after he already had been
20 discharged from parole. SAC at 8². Specifically, Plaintiff explains
21 that on March 17, 2006, Officers Brizuela and Rubio stopped his car
22 while he was driving home from his drug treatment program. Id.
23 According to Plaintiff, when he exited the car, an unknown man pointed
24

25 ¹ The instant facts are those from the SAC pertaining to claims that survived
26 the district judge's final screening on June 12, 2007.

27 ² For ease of reference, the Court relies on the page numbering at the top
28 of the SAC, which was affixed by the Court's electronic filing system.

1 a gun at him and then Officers Brizuela and Rubio "attacked" him, forced
2 his hands behind his back, pushed him to the ground, punched him in the
3 face, sprayed him with something, punched him again, kicked him, then
4 put him in handcuffs and leg chains. Id. at 8-9. They allegedly told
5 him during this struggle that they just wanted to talk to him, but
6 wanted him to be handcuffed first. Id. Plaintiff claims he was never
7 told he was being placed under arrest, but he was taken to the El Cajon
8 parole office and talked to before being released. Id. at 9-10.

9 In his SAC, Plaintiff seeks an injunction preventing the officers
10 from retaliating against Plaintiff for filing the instant action and
11 \$7,000,000.00 in punitive damages. Id. at 17.

12 DISCUSSION

13 Defendants seek dismissal of Plaintiff's SAC on the ground that
14 they are immune from liability under the Eleventh Amendment because
15 Plaintiff's claims for monetary damages were brought against them solely
16 in their official capacities. Defs.' Mem. at 1-2. In response,
17 Plaintiff points out that he, in fact, sued Defendants in both their
18 official and individual capacities, as reflected on page two of his SAC
19 where he checked the boxes for both individual and official capacities
20 for each officer.³ Pl.'s Opp'n at 1.

21 It is well established that the Eleventh Amendment bars a
22 prisoner's § 1983 claims for monetary damages against state actors sued
23 in their official capacities. See Will v. Michigan Dep't of State
24 Police, 491 U.S. 58, 66, 71 (1989) (emphasizing that the amendment
25 prohibits damages actions against the "official's office," in other
26

27 ³ Plaintiff utilized the standardized section 1983 complaint form provided
28 by the Southern District of California.

1 words, actions that are in reality suits against the state itself,
2 rather than its individual officials); Pena v. Gardner, 976 F.2d 469,
3 472 (9th Cir. 1992). Thus, to the extent Plaintiff sued Defendants in
4 their official capacities seeking monetary damages as a remedy for his
5 excessive force claims, his claims are barred by the Eleventh Amendment
6 and must be dismissed.

7 However, it is equally well-established that the Eleventh Amendment
8 does not bar damage actions against state officials sued in their
9 personal capacities. Hafer v. Melo, 502 U.S. 21, 30-31 (1991). A
10 personal capacity suit is one in which the plaintiff seeks to impose
11 individual liability upon a government officer for actions taken under
12 color of state law. Id. at 25.

13 While Defendants argue essentially that it is immaterial that
14 Plaintiff checked the "individual capacity" box because he wrote "in
15 their official capacity" within his description of the his excessive
16 force claims (see Def.'s Reply at 1-2), the Court disagrees. Where a
17 section 1983 plaintiff is proceeding *pro per* and *in forma pauperis*, the
18 Court has a duty to construe his complaint liberally in determining the
19 capacity in which the defendants are being sued. Ashker v. California
20 Dept. of Corr., 112 F.3d 392, 395 (9th Cir. 1997). Moreover, the Ninth
21 Circuit repeatedly has held that "a section 1983 suit against state
22 actors necessarily implies a suit against the defendants in their
23 personal capacities." Cerrato v. San Francisco Cmty. Coll. Dist., 26
24 F.3d 968, 973 n.16 (9th Cir. 1994). In this case, Plaintiff specified
25 clearly in his SAC that he intended to sue Defendants in their
26 individual capacities, that he was seeking to hold Defendants liable for
27 actions they took "under color of law" and that he was seeking monetary
28 damages. See SAC at 2, 8, 13, 17. Because Plaintiff is proceeding both

1 *pro per* and *in forma pauperis*, the Court finds these allegations
2 sufficient to sustain his SAC against Defendants in their individual or
3 personal capacities. See Ashker, 112 F.3d at 395.

4 Accordingly, this Court **RECOMMENDS** that Defendants' Motion to
5 Dismiss be **GRANTED IN PART AND DENIED IN PART**.

6 **CONCLUSION**

7 For the foregoing reasons, **IT IS HEREBY RECOMMENDED** that the
8 District Court issue an Order: (1) approving and adopting this Report
9 and Recommendation, (2) granting Defendants' Motion to Dismiss as to
10 Plaintiff's claims for damages against Defendants in their official
11 capacities, and (3) denying Defendants' Motion to Dismiss as to
12 Plaintiff's claims for damages against Defendants in their individual
13 capacities.

14 **IT IS HEREBY ORDERED** that any written objections to this Report
15 must be filed with the Court and served on all parties **no later than**
16 **February 14, 2008**. The document should be captioned "Objections to
17 Report and Recommendation."

18 **IT IS FURTHER ORDERED** that any reply to the objections shall be
19 filed with the Court and served on all parties **no later than February**
20 **28, 2008**. The parties are advised that failure to file objections
21 within the specified time may waive the right to raise those objections
22 on appeal of the Court's order. See Turner v. Duncan, 158 F.3d 449, 455
23 (9th Cir. 1998).

24 DATED: January 30, 2008

25 

26 BARBARA L. MAJOR
27 United States Magistrate Judge
28

1 COPY TO:

2 HONORABLE WILLIAM Q. HAYES
3 U.S. DISTRICT JUDGE

4 ALL COUNSEL
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